IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CRP.No. 800 of 2007()

OS.158/1999 of I ADDL.SUB COURT, KOZHIKODE

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REVN. PETITIONER: RESPONDENT/JUDGMENT DEBTOR NO.5

MR.PREMKUMAR, S/O.P.VELAYUDHAN NAIR,
PRARTHANA, KARAPARAMBU, KOZHIKODE - 10.

BY ADV. SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.JOSE KURIAKOSE (VILANGATTIL)
SRI.JOMANY JOHN

RESPONDENT: PETITIONER/DECREE HOLDER

THE FEDERAL BANK LTD.
BRANCH OFFICE PUTHIYARA
CALICUT, KALATHINKUNNU AMSOM,
DESOM, KOZHIKODE TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.NO.800 OF 2007

Dated this the 6th day of September, 2007.

O R D E R

This revision petition is filed by the 5th judgment debtor, who is the 4th respondent in the E.P, against an order passed by the 1st Additional Sub Judge ordering arrest against him for failure to make payment of the decree amount in spite of having means. The learned counsel for the revision petitioner very strongly contends, before me when the matter came up before this Court, that on an earlier occasion as this Court dissatisfied with the evidence, remanded the matter for disposal. I have gone through the present order passed by the court below. The decree holder has examined PW1 – a former Manager, and PW2 – the present Manager. In the affidavit filed, it is stated that the 5th judgment debtor is the owner of a business concern by name Devi Emporium. He is having 5.57 cents of property in R.S.No.13/23 of Nedumkandam Village and that he is having insurance policies worth about Rs.6 lakhs and that he is also having gold ornaments worth Rs.1,12,000/=. These were not supplied by the Bank authorities on their own imagination, but the

data furnished by the 5th judgment debtor before the decree holder Bank when he had executed the documents as the co-obligant of the 2nd defendant. PW2- the present Manager also re-asserted the same and faced cross examination. When the judgment debtor himself had furnished the details before the Bank regarding his assets at the time of praying for advancement of the loan as a surety, if it is not correct, it is for him to prove it either by producing the documentary evidence or at least by examining himself as a witness before the court. It stands settled that the onus of proving means is certainly on the decree holder and when the decree holder is able to point out the court regarding the means or the realisable assets which belong to the judgment debtor, certainly the burden shifts to the judgment debtor to prove it otherwise. The judgment debtor cannot pray that he shall not be arrested at all. Therefore, the data furnished by him as spoken to by Pws1 and 2 is sufficient to indicate that he is having a business, he is having a landed property and that he is having even gold ornaments. There is no evidence adduced to rebut that evidence. I am convinced that the court below has looked into the matter properly, appreciated the evidence correctly and there is no illegality or irregularity which warrants interference under Section

115 of the Civil Procedure Code in the revision jurisdiction.

Therefore, the revision petition is dismissed. But, in order to enable the 5th judgment debtor, if he is really keen to pay the amount, I direct the court below to defer issuance of arrest warrant for a period of six weeks and if no amount is paid within that time, he shall be arrested and detained in civil prison.

M.N. KRISHNAN, JUDGE.

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